IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3694 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VASNA @ TITARIYA DITIYABHAI DEHDHA

Versus

DISTRICT MAGISTRATE

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Appearance:

HL PATEL ADVOCATES for the Petitioner

MR HL JANI, A.G.P., for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 25/06/2001

ORAL JUDGEMENT

Heard Ld.Advocate, Mr.Vijay Patel on behalf of the petitioner and Ld.A.G.P., Mr.H.L.Jani appearing on behalf of the Respondent-State.

2. In the present petition, the order of detention dated 16th September, 2000 has been challenged by the petitioner under Art.226 of the Constitution of India. The order of detention has been passed by District Magistrate, Dahod under the provision of Section 3(1) of Prevention of Anti-social Activities Act ('the PASA' for short).

3. The grounds of detention have been communicated and supplied to the petitioner under Section 9(1) of the PASA Act. The statements of secret witnesses have been recorded on 11th August, 2000, 13th August 2000, 18th August, 2000 and 20th August, 2000 and the said statements have been verified by Dy.S.P. on 1st September, 2000 and thereafter, on 14th September, 2000 such all four statements verified by the Sub Divisional Magistrate and not by the detaining authority.

4. The last offence was registered on 2nd March, 2000 and according to the statements of secret witnesses, the last offence unregistered is July, 2000. The State of Gujarat has not filed any reply.

5. Ld. Advocate Mr.Vijay Patel has submitted that though various contentions have been raised by the petitioner challenging the detention order but according to him, one or two contentions are enough to set aside the detention order.

6. He raised first contention that subjective satisfaction of the detaining authority is not established from the record. He submitted that the statements of secret witnesses recorded by the concerned Police Inspector on 11st August, 2000, 13th August, 2000, 18th August, 2000 and 20th August, 2000. These all statements of four witnesses were verified by the Dy.S.P. on 1st September, 2000. Thereafter, the Sub Divisional Magistrate, Dahod has again verified on 14th September, 2000 but these statements of secret witnesses, according to the record, not verified by the detaining authority. Ld. Advocate, Mr.Patel has submitted that genuineness of the statements submitted by the secret witnesses are required to be verified by the detaining authority before passing the detention order against the present

petitioner. Therefore, it amounts to total non-application of mind on the part of detaining authority. These facts have not been explained by the detaining authority. Ld. Advocate, Mr.patel has also raised a contention that the last statement of secret witness, at the time of verification, a note has been made by the Sub Divisional Magistrate that on verification no such person is available and, therefore, verification has not been carried out. Therefore, Mr.Patel has submitted that according to the grounds of detention though the last statement was not verified even by the Sub Divisional Magistrate but the same has been considered by the detaining authority against the present petitioner and therefore, also the order of detention is vitiated. He also submitted that in all five offences registered against the present petitioner the last offence registered on 2rd March, 2000 and considering the unregistered offence the last is July, 2000 and order of detention is 16th September, 2000. Therefore, there was a delay of two months in passing the detention order from the last offence registered against the present petitioner. This delay remained unexplained by the detaining authority and, therefore, he relied upon the decision of this Court, reported in 1997 (1) GLH 381.

7. Ld.A.G.P., Mr.H.L.Jani appearing on behalf of the Respondent-State has submitted with respect to the first contention that the detaining authority has not verified the genuineness of the statements of secret witnesses from the record, he is not disputing the situation. He fairly submitted that it is the duty of the detaining authority to verify the genuineness of the secret witnesses but looking to the original record the detaining authority has not verified but in fact the Sub Divisional Magistrate has verified the same. Therefore, Mr.Jani fairly agreed that it amounts to non-application of mind, subjective satisfaction is not established from the original record. With respect to the second contention also, Mr.Jani, he is not disputing the situation. Therefore, Mr.Jani, however, submitted that looking to the facts and materials on record and registered offence there was compelling circumstances that the detaining authority to pass detention order and therefore, detention order is rightly passed by the detaining authority and therefore, according to his submission, no interference is required by this Court.

8. I have considered the submissions of both the Ld. Advocates, looking to the undisputed facts from the original record that the statements of secret witnesses though recorded and verified by the Dy.S.P. as well as

Sub Divisional Magistrate, Dahod but the same has not been verified by the detaining authority and therefore, subjective satisfaction as well as claiming privilege under Section 9(2) of the PASA Act cannot be established. It is the duty of the detaining authority to verify the genuineness of the statement of the secret witness and thereafter, taking into account the detaining authority shall have to pass detention order but in present case, the detaining authority has not at all verified the statements of secret witnesses and therefore, on this ground, the order of detention is required to be set aside. However, it is necessary to note that in the last statement of secret witness where the person is not available as per the Note made by the Sub Divisional Magistrate, Dahod even though in the ground of detention the facts of four statements have been taken into account by detaining authority. Therefore, the statement which is not even verified by Sub Divisional Magistrate has been taken into account while passing the detention order, it amounts to a gross error and non-application of mind of the detaining authority. It is also necessary to consider that two months delay in passing the detention order which remained unexplained and in between there was no offence registered or unregistered against the present petitioner and therefore, the detention order is without application of mind and there was no proximate or any direct nexus which required to pass impugned order of detention has been established and therefore, according to the observations made by this Court in Paragraph 21 in reported decision 1997 (1) GLH 381.

> "21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenue was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered

> cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993(2) Suppli. SCC 61."

9. Looking to the above observations of this Court and considering the facts that the detaining authority has totally failed in establishing the subjective satisfaction by the detaining authority on record and, therefore, according to my opinion, in the present case the order of detention is required to be set aside.

10. Therefore, the present petition is allowed. The order of detention dated 16, September, 2000 passed by the District Magistrate, Dahod is hereby quashed and set aside. The present petitioner-detenue Shri Vasna Titariya Ditiyabhai Dehdha detained in District Jail, Surat is ordered to be released immediately, if he is not required in any other case. Rule made absolute. No order as to costs.

(H.K.Rathod, J)

'Bhavesh'